

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 03 2018

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

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2 Eastern District of Washington
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5

6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 MICHAEL D. MILLER,

12
13 Defendant.
14

18-CR-00034-TOR

Plea Agreement

15 Plaintiff, United States of America, by and through Joseph H. Harrington,
16 United States Attorney for the Eastern District of Washington, and George J.C.
17 Jacobs, III, Assistant United States Attorney for the Eastern District of Washington,
18 and Defendant MICHAEL D. MILLER and Defendant's counsel, John B. McEntire,
19 IV, agree to the following Plea Agreement:

20 1. Guilty Plea and Maximum Statutory Penalties:

21 Defendant, MICHAEL D. MILLER, agrees to plead guilty to Count 1 of the
22 Indictment filed on February 21, 2018, charging Defendant with distributing 50 grams
23 or more of actual (pure) methamphetamine, in violation of 21 U.S.C. § 841(a)(1),
24 841(b)(1)(A)(viii). Defendant understands that this offense is a Class A felony
25 offense, which carries a maximum statutory penalty of: not less than a ten-year nor
26 more than a life term of imprisonment; a fine not to exceed \$10,000,000; not less than
27 a five-year nor more than a life term of supervised release; and a \$100 special penalty
28 assessment. If Defendant has two or more prior felony drug convictions, and the

1 United States files a Notice of Penalty Enhancement pursuant to 21 U.S.C. § 851, the
2 offense would then carry a maximum statutory penalty of not less than a life term of
3 imprisonment, non-parolable, non-suspendable; a fine not to exceed \$20,000,000 and
4 a \$100 special penalty assessment.

5 Defendant understands that a violation of a condition of supervised release
6 carries an additional penalty of re-imprisonment for up to five years, without credit for
7 time previously served on post-release supervision.

8 2. Denial of Federal Benefits:

9 Defendant understands that by entering this plea of guilty, Defendant may no
10 longer eligible for assistance under any state program funded under part A of title IV
11 of the Social Securities Act (concerning Temporary Assistance for Needy Families) or
12 benefits under the food stamp program or any state program carried out under the
13 Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny Defendant's
14 eligibility to any grant, contract, loan, professional license, or commercial license
15 provided by an agency of the United States or by appropriated funds of the United
16 States. *See* 21 U.S.C. § 862.

17 3. The Court is Not a Party to the Agreement:

18 The Court is not a party to this Plea Agreement and may accept or reject it.
19 Sentencing is a matter solely within the discretion of the Court. Defendant
20 understands that the Court is under no obligation to accept any recommendations
21 made by the United States and/or by the Defendant; that the Court will obtain an
22 independent report and sentencing recommendation from the U.S. Probation Office;
23 and that the Court may, in its discretion, impose any sentence it deems appropriate up
24 to the statutory maximum penalties stated in the Plea Agreement.

25 Defendant acknowledges that no promises of any type have been made to the
26 Defendant with respect to the sentence the Court will impose in this matter.

27 Defendant understands that the Court is required to consider the applicable sentencing
28

1 guideline range, but may depart or vary upward or downward under the appropriate
2 circumstances.

3 Defendant also understands that should the sentencing judge decide not to
4 accept any of the parties' recommendations, that decision is not a basis for
5 withdrawing from this Plea Agreement, or a basis for withdrawing his plea of guilty.

6 4. Waiver of Constitutional Rights:

7 Defendant understands that by entering his plea of guilty, Defendant is
8 knowingly and voluntarily waiving certain constitutional rights, including:

- 9 (a) The right to a jury trial;
- 10 (b) The right to see, hear, and question the witnesses;
- 11 (c) The right to remain silent at trial;
- 12 (d) The right to testify at trial; and
- 13 (e) The right to compel witnesses to testify.

14 While Defendant is waiving certain constitutional rights, Defendant understands
15 he retains the right to be assisted through the sentencing and any direct appeal of the
16 conviction and sentence by an attorney, who will be appointed at no cost if Defendant
17 cannot afford to hire an attorney. Defendant also acknowledges that any pretrial
18 motions currently pending before the Court are waived.

19 5. Elements of the Offense:

20 The parties agree that, in order to convict Defendant of distributing 50 grams or
21 more of actual (pure) methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),
22 841(b)(1)(A)(viii), as charged in Count 1 of the Indictment filed on February 21,
23 2018, the United States would have to prove beyond a reasonable doubt the following
24 elements:

25 *First*, on or about October 15, 2015, in the Eastern District of
26 Washington, Defendant knowingly and intentionally distributed actual (pure)
27 methamphetamine;

1 *Second*, Defendant knew that it was methamphetamine or some other
2 prohibited drug; and

3 *Third*, the actual (pure) methamphetamine weighed 50 grams or more.

4 6. Factual Basis and Statement of Facts:

5 The parties stipulate and agree that the United States could prove the following
6 facts beyond a reasonable doubt at trial, and these facts constitute an adequate factual
7 basis for Defendant's guilty plea. This statement of facts does not preclude either
8 party from presenting and arguing, for sentencing purposes, additional facts which are
9 relevant to the guideline computation or sentencing, unless otherwise prohibited in
10 this agreement.

11 On October 15, 2015, the FBI Task Force utilized a cooperating individual
12 ("CI") to conduct a controlled purchase of methamphetamine from Defendant
13 MILLER. Surveillance units observed Defendant MILLER during the controlled
14 purchase with the CI at Zips, located at Trent and Fancher, Spokane Valley,
15 Washington. Defendant MILLER distributed 109.4 grams of pure methamphetamine
16 (subsequently confirmed by the U.S. Drug Enforcement Administration (DEA)
17 Western Regional Laboratory's chemical analysis) to the CI in exchange for
18 \$2,200.00 of task force buy money.

19 On October 29, 2015, the FBI Task Force conducted another controlled
20 purchase of methamphetamine from Defendant MILLER in Spokane Valley,
21 Washington. The CI exchanged task force buy money with MILLER. Defendant
22 MILLER distributed 128.4 grams of pure methamphetamine (subsequently confirmed
23 by DEA's chemical analysis) to the CI in exchange for task force buy money.

24 The total quantity of pure methamphetamine attributable to Defendant MILLER
25 throughout the course of the operation was 237 grams. Methamphetamine is a
26 Schedule II controlled substance.

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1 7. The United States Agrees:

2 (a) To Dismiss Counts:

3 At the time of sentencing, the United States agrees to move to dismiss (with
4 prejudice) Count 2 of the Indictment, which charges Defendant with Distribution of
5 50 Grams or More of Actual (pure) Methamphetamine, in violation of 21 U.S.C. §
6 841(a)(1), (b)(1)(B)(viii).

7 (b) Not to File Additional Charges:

8 The United States Attorney's Office for the Eastern District of Washington
9 agrees not to bring any additional charges against Defendant based upon information
10 in its possession at the time of this Plea Agreement and arising out of Defendant's
11 conduct involving illegal activity charged in the Indictment or this investigation,
12 unless Defendant breaches this Plea Agreement any time before sentencing.

13 (c) Not to File Information for Penalty Enhancement:

14 The United States agrees not to file an enhanced penalty information to
15 establish Defendant's prior felony drug convictions pursuant to 21 U.S.C. § 851.

16 8. United States Sentencing Guideline Calculations:

17 Defendant understands and acknowledges that the United States Sentencing
18 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
19 determine Defendant's applicable sentencing guideline range at the time of
20 sentencing.

21 (a) Base Offense Level:

22 The parties agree and stipulate that Defendant's base offense level is 32. USSG
23 § 2D1.1(c)(4).

24 (b) Specific Offense Characteristics:

25 The parties believe that no specific offense characteristics or adjustments apply
26 or will be sought.

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1 (c) Acceptance of Responsibility:

2 If Defendant pleads guilty and demonstrates a recognition and an affirmative
3 acceptance of personal responsibility for the criminal conduct; provides complete and
4 accurate information during the sentencing process; does not commit any obstructive
5 conduct; accepts this Plea Agreement; and enters a plea or guilty no later than ^{July 3} ~~June 28~~,
6 2018, the United States will move for a three (3) level downward adjustment in the
7 offense level for the Defendant's timely acceptance of responsibility, pursuant to
8 USSG § 3E1.1(a) and (b).

9 The parties agree that the United States may at it option and upon written notice
10 to Defendant, not recommend a three (3) level reduction for acceptance of
11 responsibility if, before sentencing, Defendant is charged or convicted of any criminal
12 offense whatsoever, or if Defendant tests positive for any controlled substance.

13 (d) Criminal History:

14 The United States and Defendant make no agreement on Defendant's criminal
15 history category, which shall be determined by the Court after the Presentence
16 Investigative Report is completed.

17 9. Incarceration:

18 The United States agrees to recommend the Court impose a sentence at the low
19 end of the applicable guideline range or 120 months, whichever is higher. Defendant
20 is free to ask for any lawful sentence.

21 10. Criminal Fine:

22 The parties are free to make whatever recommendation concerning the
23 imposition of a criminal fine that they believe is appropriate.

24 11. Supervised Release:

25 The parties agree to recommend that the Court impose a five-year term of
26 supervised release to include the following special conditions, in addition to the
27 standard conditions of supervised release:

1 (a) That Defendant participate and complete such drug testing and
2 treatment programs as the Probation Officer directs; and

3 (b) That Defendant's person, residence, office, vehicle, and belongings
4 are subject to search at the direction of the Probation Officer, upon
5 reasonable suspicion of contraband or evidence of violation of a
6 condition of supervision.

7 12. Mandatory Special Penalty Assessment:

8 The Defendant agrees to pay the \$100 mandatory special penalty assessment to
9 the Clerk of Court for the Eastern District of Washington. *See* 18 U.S.C. § 3013.

10 13. Payments While Incarcerated:

11 If Defendant lacks the financial resources to pay the monetary obligations
12 imposed by the Court, then Defendant agrees to earn the money to pay toward these
13 obligations by participating in Bureau of Prisons' Inmate Financial Responsibility
14 Program.

15 14. Additional Violations of Law Can Void Plea Agreement:

16 The parties agree that the United States may at its option and upon written
17 notice to Defendant, withdraw from this Plea Agreement or modify its
18 recommendation for sentence if, before sentencing, Defendant is charged or convicted
19 of any criminal offense whatsoever or if Defendant tests positive for any controlled
20 substance.

21 15. Appeal Rights:

22 Defendant understands that he has a limited right to appeal or challenge the
23 conviction and sentence imposed by the Court. Defendant hereby expressly waives
24 his right to appeal his conviction, but reserves the right to appeal the sentence if the
25 Court imposes a sentence over 140 months or if the Court applies a special offense
26 characteristic or adjustment not agreed to by the parties. Defendant further expressly
27 waives his right to file any post-conviction motion attacking his conviction and
28 sentence, including a motion pursuant to 28 U.S.C. § 2255, except one based upon

1 ineffective assistance of counsel based on information not now known by Defendant
2 and which, in the exercise of due diligence, could not be known by Defendant by the
3 time the Court imposes the sentence.

4 16. Integration Clause:

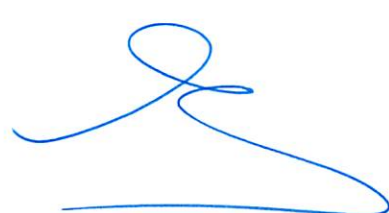
5 The parties acknowledge that this document constitutes the entire Plea
6 Agreement between the parties, and no other promises, agreements, or conditions exist
7 between the parties concerning this case's resolution. This Plea Agreement is binding
8 only upon the United States Attorney's Office for the Eastern District of Washington,
9 and cannot bind other federal, state, or local authorities. The parties agree that this
10 agreement cannot be modified except in writing that is signed by the United States and
11 Defendant.

12 Approval and Signature

13
14 Agreed and submitted on behalf of the United States Attorney's Office for the Eastern
15 District of Washington.

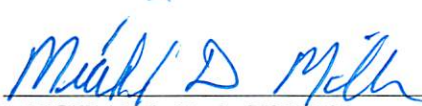
16 Joseph H. Harrington
17 United States Attorney

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21 George J.C. Jacobs III
Assistant United States Attorney

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7/3/18
Date

24 I have read this Plea Agreement and have carefully reviewed and discussed
25 every part of the agreements with my attorney. I understand and voluntarily enter into
26 the Plea Agreement. Furthermore, I have consulted with my attorney about my rights,
27 I understand those rights, and I am satisfied with the representation of my attorney in
28 this case. No other promise or inducements have been made to me, other than those

1 contained in this Plea Agreement and no one has threatened or forced me in any way
2 to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.
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5 MICHAEL D. MILLER

6 Defendant

7/3/18
Date

7 I have read the Plea Agreement and have discussed the contents of the
8 agreement with my client. The Plea Agreement accurately and completely sets forth
9 the entirety of the agreement between the parties. I concur in my client's decision to
10 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
11 Court should not accept Defendant's plea of guilty.
12

13
14 

15 John B. McEntire, IV
16 Attorney for Defendant

7/3/18
Date